

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DON D. LOVELL,

Plaintiff,

vs.

D.O.C. WASHINGTON STATE  
PENITENTIARY,

Defendants.

NO. CV-06-5032-RHW

ORDER DISMISSING COMPLAINT WITHOUT  
PREJUDICE

**1915 (g)**

By Order filed June 28, 2006, the Court advised Plaintiff of the deficiencies of his complaint and directed him to amend or voluntarily dismiss. Plaintiff had initiated this action while a prisoner at the Washington State Penitentiary, but was subsequently released. The Court cautioned Plaintiff that failure to comply with its directive would result in dismissal of this action for failure to state a claim upon which relief may be granted. Plaintiff has filed nothing further in this action.

Plaintiff's complaint failed to present a causal connection between named Defendants and the conduct of which he complains. See *Hamilton v. Endell*, 981 F.2d 1062, 1067 (9th Cir. 1992). Furthermore, the only named Defendant, "D.O.C. Washington State Penitentiary

1 Employee's," is not a "person" subject to § 1983 liability. See *Will*  
2 *v. Michigan Dep't of State Police*, 491 U.S. 58, 70-71 (1989) (holding  
3 that "'arms of the State' for Eleventh Amendment purposes" are not  
4 liable under § 1983). Although granted the opportunity to do so,  
5 Plaintiff did not amend his complaint to state a claim upon which  
6 relief may be granted.

7 Accordingly, for the reasons set forth above and in the Order to  
8 Amend or Voluntarily Dismiss Complaint (Ct. Rec. 6), **IT IS ORDERED** the  
9 Complaint is **DISMISSED without prejudice** for failure to state a claim  
10 upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2) and  
11 1915A(b)(1).

12 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a  
13 prisoner who brings three or more civil actions or appeals which are  
14 dismissed as frivolous or for failure to state a claim will be  
15 precluded from bringing any other civil action or appeal *in forma*  
16 *pauperis* "unless the prisoner is under imminent danger of serious  
17 physical injury." 28 U.S.C. § 1915(g). **Plaintiff is advised to read**  
18 **the new statutory provisions under 28 U.S.C. § 1915. This dismissal**  
19 **of Plaintiff's complaint may count as one of the three dismissals**  
20 **allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to**  
21 **file future claims.**

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1       **IT IS SO ORDERED.** The District Court Executive is directed to  
2 **enter** this Order, **forward** a copy to Plaintiff at his last known  
3 address, **enter judgment**, and **close the file**. The District Court  
4 Executive is further directed to forward a copy of this Order to the  
5 Office of the Attorney General of Washington, Criminal Justice  
6 Division.

7       **DATED** this 23<sup>rd</sup> day of October, 2006.

8                               *s/ Robert H. Whaley*

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10                              ROBERT H. WHALEY  
11                              CHIEF UNITED STATES DISTRICT JUDGE

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